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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,247	11/20/2003	Mitsutoshi Shinkai	450100-04812	9926
7590 03/30/2009 FROMMER LAWRENCE & HAUG LLP 745 FIFTH AVENUE NEW YORK, NY 10151			EXAMINER FLEURANTIN, JEAN B	
			ART UNIT 2162	PAPER NUMBER
			MAIL DATE 03/30/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,247

Applicant(s)

SHINKAI ET AL.

Examiner

JEAN B. FLEURANTIN

Art Unit

2162

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.6-14, 16, 17, 19, 21-35 and 50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1.8-14, 16, 17, 19, 21-33 and 50 is/are allowed.
- 6) ☒ Claim(s) 6, 7, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This is in response to Applicant(s) arguments filed on 01/14/2009.

The following is the current status of claims:

Claims 2-5, 15, 18, 20 and 36-49 have been canceled.

Claims 1, 6-14, 16-17, 19, 21-35 and 50 remain pending for examination.

Response to Arguments

2. Applicant's arguments, filed on 01/14/2009, with respect to 35 USC § 101 rejection(s) of claims 1 and 8-14, 16-17, 19 and 21-33 have been fully considered and are persuasive. The 35 USC § 101 rejection(s) of claims 1 and 8-14, 16-17, 19 and 21-33 has (have) been withdrawn.

However, upon further consideration, claims 6, 7, 34 and 35 are rejected under 35 USC § 101 set forth in section 3.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 6, 7, 34 and 35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

As per independent claims 6, 34 and 35

The independent claims 6, 34 and 35 are directed to a computer-readable "medium". The claimed steps are not being performed by any form of computer hardware component. The claimed, "medium" fails to fall within one of four statutory categories of invention, process, machine, manufacture and composition, and is software per se.

Moreover, applicant specification, describes "medium" as a medium for transferring instruction signals., page 63, lines 12-13.

As per independent claim 7

The independent claim 7 recites a "method," it is not unclear whether the method is necessarily tied to any computer hardware, thereby defining a statutory process. In *re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc). A statutory process must (1) be "tied" to another statutory class (such as a machine) or (2) "transform" underlying subject matter (such as an article or materials) to a different state or thing. *Id.* Since the instantly claimed method does not appear to satisfy either requirement, the method is not a "process" within the meaning of § 101.

Allowable Subject Matter

4. Claims 1, 8-14, 16-17, 19, 21-33 and 50 are allowed.

CONTACT INFORMATION

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is (571)272-4035. The examiner can normally be reached on 10:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E. BREENE can be reached on 571 - 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jean B. Fleurantin/
Primary Examiner, Art Unit 2162